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CHARLES ELMORE GORDON
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. **595**

8

ZIFFRIN, INCORPORATED,

Appellant,

versus

**JAMES W. MARTIN, Commissioner of Revenue of the
Commonwealth of Kentucky, Et Al.,**

Appellees.

**APPELLANT'S BRIEF UPON APPELLEES' MOTION
OPPOSING APPELLANT'S JURISDICTIONAL
STATEMENT.**

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Supreme Court of the United States

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No. _____

ZIFFRIN, INCORPORATED, - - - - - *Appellant,*

v. 

JAMES W. MARTIN, COMMISSIONER OF REVE-
NUE OF THE COMMONWEALTH OF KEN-
TUCKY, ET AL., - - - - - *Appellees.*

**APPELLANT'S BRIEF UPON APPELLEES' MOTION
OPPOSING APPELLANT'S JURISDICTIONAL
STATEMENT.**

I.

**REFERENCE TO OFFICIAL REPORT OF
OPINION BELOW.**

The Opinion of the specially constituted statutory Three-Judge Court, sitting as the United States District Court for the Eastern District of Kentucky, delivered below, and being the only opinion delivered by the Court below, is officially reported under the style, *Ziffrin, Inc. v. Martin, Et Al.*,⁷ in 24 Fed. Supp. 924.

II.

STATEMENT OF THE CASE.

January 25, 1939, the appeal herein was allowed and citation issued. On February 8, 1939, appellees served appellant with a typewritten statement contemplated by *Paragraph 3 of Rule 12* of the Rules of this Court, setting forth matter asserted by appellees to constitute matter and grounds making against the jurisdiction of this Court. The record on appeal has not yet been printed by the Clerk. This brief is tendered and filed conformably with *Paragraph 3 of Rule 7* of the Rules of this Court. The printed record not being available, and there being no prospect that it will be available within the 20 days allowed for the filing of this brief, it is impossible to furnish herein page references to the record. Most of the facts pertinent to the question presented by appellees' pending motion are stated in the Jurisdictional Statement, which we presume will have been printed before the Court addresses itself to a determination of appellees' pending motion. However, there are a few facts presented by the record, but not mentioned in the Jurisdictional Statement, which are relevant to the present inquiry. These we shall mention as the discussion progresses.

The facts stated in the Jurisdictional Statement and admitted upon the face of the pleadings, show that at all times since January 1, 1935, appellant has been, and is, an Indiana corporation and an interstate con-

tract carrier of property by motor vehicle for hire; that appellant's operations, involved upon this appeal, have consisted solely and exclusively in transporting consignments of alcoholic liquors, sold by distillers and other vendors having their places of residence and business in Jefferson County, Kentucky, to purchasers domiciled and having their places of business in Indianapolis, Indiana, Chicago, Illinois, and at other places situated north of the Ohio River and in States other than Kentucky, and which cargoes have been, and are, transported and delivered by appellant to said purchasers pursuant to special contracts of carriage existing between appellant and the vendors and consignors, and by continuous and uninterrupted transit from point of origin to destination; and that such of appellant's operations as have penetrated the territorial limits and confines of Kentucky consisted, and consist, exclusively in the carriage of interstate exports of alcoholic liquors from and out of Kentucky to other States.

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III.

ARGUMENT.

(a) No Stay of State Court Proceedings Is Involved.

Appellees urge two principal grounds in opposition to this Court entertaining jurisdiction of the appeal. The first ground is founded upon the provisions of *Judicial Code, Sec. 265*, U. S. C., Title 28, Sec. 379. These provisions of the Judicial Code are entirely inapplicable because they pertain to *stay of pending* proceedings in a state Court, and appellant does not seek in this cause to stay any pending proceeding whatever in any state Court. In fact, no state Court proceeding ever has been instituted between the parties to this record, and there never has been any state Court proceeding to stay. What appellant seeks in this suit is to prevent enforcement against it of the terms and provisions of the Kentucky 1938 "*Alcoholic Beverage Control Law*" (Ky. Stats., Sec. 254b-97, *et seq.*), including, among other things, prevention, it is true, of the institution and commencement of a multiplicity of threatened criminal and confiscatory proceedings and prosecutions against appellant, its officers and employees, and consigned cargoes of liquors. Manifestly, however, the prevention of the institution and commencement of such *threatened* proceedings is an entirely different matter from the stay of the *pending* proceedings contemplated by the cited section of the Judicial Code. In numerous cases, cited later in this brief, injunctive

prevention of enforcement of unconstitutional state statutes has been sanctioned and granted, and the action of the Federal Courts in granting such relief never has been deemed in contravention of the cited section, or any other section, of the Judicial Code.

(b) Appellant Has No Adequate Remedy at Law.

The second ground which appellees assert should induce this Court to decline to entertain jurisdiction is that appellant should be denied equitable relief because the Kentucky Statutes, Sec. 2554b-147 and Sec. 2739j-86, *et seq.*, show appellant to have had adequate and complete remedies at law for the review of (a) the decision of the Director of the Division of Motor Transportation, denying appellant a common carrier's certificate, and (b) the decision of the Commissioner of Revenue and the Alcoholic Beverage Control Board of Kentucky, denying appellant a liquor Transporter's License. It is true that the Kentucky Statutes provide for appeals from decisions and rulings of the character in question. However, as will be shown, *prosecution of such appeals by appellant would have been futile, in that they would not have prevented the destruction of its established, profitable and valuable business.*

As shown by the pending motion and by the Jurisdictional Statement, (a) the pretended Alcoholic Beverage Control Law of Kentucky (hereinafter called "Control Law") the validity of which is drawn in question, specifies that the only kind of carrier by

motor vehicles eligible to obtain the liquor Transporter's License is a motor carrier holding a common carrier's certificate from the Division of Motor Transportation, and (b) the Division of Motor Transportation is not permitted to issue a common carrier's certificate (which is a *certificate of public convenience and necessity*), to any carrier unless it be engaged in the business of *common carriage*. The consequence is that under the Kentucky Statutes the Director of the Division of Motor Transportation, in denying appellant's application for a common carrier's certificate, cannot be said to have acted without or in excess of his powers, and his decision cannot be said to have been otherwise than in conformity with the Kentucky Act governing such matters. The Director's finding of facts was fully supported by substantial evidence, because upon the hearing before him appellant frankly stated that it was a *contract* carrier and not a *common* carrier. There is no claim or pretense that the Director's decision was procured by fraud. Such being the facts and such being the only grounds provided by the Kentucky Motor Transportation Act for an appeal from a decision by the Director, appellant had not a single ground of appeal, and prosecution of an appeal would have been nothing short of frivolous. Similarly, no fraud was involved in the action of the Commissioner of Revenue and the Alcoholic Beverage Control Board in denying appellant's application for a liquor Transporter's License, and there was ample evidence before them that appellant did not hold a common carrier's

certificate, and consequently, under the provisions of the Control Law, was ineligible to receive the Transporter's License. The Commissioner and the Control Board strictly obeyed the Control Law, as written, and did not act without or in excess of their powers in denying appellant a liquor Transporter's License, *except insofar as their action in so doing represented enforcement of a Kentucky Statute void because in conflict with the Constitution and laws of the United States.*

It is true that it was open to appellant to appeal to the Franklin Circuit Court, and thence—if need be—to the Court of Appeals of Kentucky, asserting the same constitutional objections to the Control Law that are asserted in this case. The Control Law in question confers the right to prosecute such appeals and by its own terms establishes the appellate procedure, but it does not provide for, *permit, or admit of, an injunction pending the appeal.* (See Sec. 49, pp. 19-21, hereof.) The result is that during the pendency of such appeal, had the same been prosecuted, appellant would have been unable to transact its business and necessarily would have lost its special contracts of carriage. The distillers and other shippers certainly would not have deferred making shipments until Ziffrin, Inc., had prosecuted its appeals through the Franklin Circuit Court and the Court of Appeals of Kentucky, to say nothing of having waited until the matter finally might have been determined upon ultimate review by the Supreme Court of the United States. Consequently, in application to appellant and its business,

the remedy of appeal provided by the Kentucky Statutes was, and is, a remedy utterly inadequate to protect appellant's business and investment from imminent destruction.

Appellees' contention that appellant has an adequate remedy at law is untenable. The record shows that since July 1, 1938, appellees have threatened to enforce, and unless enjoined by the Court will attempt to enforce, the Control Law's penal, criminal and confiscatory provisions against appellant, its officers, automotive equipment and against its interstate shipments and consignments of whiskies. For a *first offense*, consisting in transporting intoxicating liquors without holding a Transporter's License, the Control Law, Sec. 94, Ky. Stats., Sec. 2554b-195, prescribes a fine of not less than \$100.00 and not more than \$5,000.00 and imprisonment not to exceed 5 years, or both; for *second and subsequent offenses*, a fine or not less than \$500.00 and not more than \$10,000.00, or imprisonment for a term not exceeding 10 years, or both, which penalties may be inflicted not only upon the corporation, but also upon its officers and employees. Whiskies in possession of an unlicensed carrier, and motor vehicles carrying the same, are declared contraband, subject to confiscation (Control Law, Sec. 53; Ky. Stats., Sec. 2554b-151).

The record shows that continuation of such threats of enforcement will destroy appellant's business and its capital investment therein, and will result in immediate, inevitable and irreparable loss, and that un-

less restrained by the Court, appellees intend, threaten to, and will cause numerous vexatious criminal proceedings to be commenced and prosecuted against appellant, its officers, equipment and cargoes, which prosecutions will be in excess of 10 in number.

Under the *Control Law*, Sec. 89, Ky. Stats., Sec. 2554b-190, distillers are forbidden to transport by an unlicensed carrier *under penalty of revocation of their distiller's licenses*. Distillers will not take that risk. Neither appellant nor appellant's customers can await a long deferred decision by state Courts. The shipments must go forward, and if appellant is not in a position to transport such consignments then, obviously, the distillers with whom appellant has contracts, and appellant's other customers, will make other arrangements, and by the time the constitutional questions would be decided by resort to the appellate procedure prescribed by the Control Law, appellant's contracts would be lost and its business destroyed, even though after weary years of litigation the Kentucky Courts ultimately should hold the Control Law to be unconstitutional.

Boise Artesian, Etc., Water Co. v. Boise City, 213 U. S. 276, 53 L. Ed. 796, and *Matthews v. Rodgers*, 284 U. S. 521, 76 L. Ed. 447, cited and quoted in the pending motion, representing efforts to restrain the collection of a municipal and state privilege tax respectively, are clearly distinguishable, in that in both cases only the matter of the payment of a mere tax was involved, and the suitors had available to them complete

and adequate remedies at law. In the case at bar the matter is not one of mere collection of a tax,—appellant paid the fees and taxes for both the common carrier's certificate and Transporter's License, as the record shows without contradiction. The question upon this appeal is not whether appellant temporarily is to be *out of pocket* for tax payments; the question is *whether appellant is to be completely and permanently out of business*. It would profit appellant nothing ultimately to win its case via the route of the statutory appellate procedure suggested by appellees, if appellant loses its entire business and capital investment, *pendente lite*, as it surely would absent the protection of an interlocutory injunction, not obtainable in such state appellate proceedings. Such a winning of the case would prove a Pyrrhic victory, indeed.

In the above cited cases, relied upon by appellees, nothing more was involved than contentions of unconstitutionality of an ordinance and a statute. In the case at bar, not only the unconstitutionality of the Control Law is presented, but facts exist (fully pleaded in the bill of complaint as amended and confessed by the motion to dismiss the bill) bringing the case under recognized heads of equity jurisdiction, showing appellant to be possessed of no adequate remedy at law and to be entitled to injunctive relief.

A situation analogous to that involved upon this appeal frequently has been presented in cases involving the rates of public utilities, prescribed by public authority, in which cases it unsuccessfully has

been contended that the affected utilities could not obtain injunctive relief in the Federal courts based upon the ground that the State action complained of violated the utilities' constitutional rights because available to them were alternate remedies at law in the State courts or before State Commissions. Time after time this Court has held that the existence of such optional legal remedies did not oust the Federal courts of jurisdiction where the facts showed such legal remedies to be inadequate or incomplete (*Hollis v. Kutz*, 255 U. S. 452, 65 L. Ed. 727; *Pendergast v. New York Tel. Co.*, 262 U. S. 43, 67 L. Ed. 853; *Banton v. Belt Line Ry. Corp.*, 268 U. S. 413, 69 L. Ed. 1020.)

Manifestly, there is an intimate association and relation between enforcement of the Control Law's criminal provisions and the appellant's property right in its established interstate business. The inadequacy of the remedy at law proffered appellant in the State courts of Kentucky is patent when the situation is viewed in the light of the Control Laws' criminal provisions. It is unnecessary to elaborate upon the obvious fact that appellant's officers will not take the risks incident to violating the Control Law's penal provisions, of severity almost without parallel or precedent. For reasons best known to it, the General Assembly of Kentucky provided penalties for transporting a shipment of liquor without holding a Transporter's License—an act only *malum prohibitum*—far more severe than those which it has prescribed for mayhem, involuntary manslaughter, abducting a girl child, or shooting from ambush, or illicit sale of marihuana (Ky.

Stats., Secs. 1165, 1151, 1156, 1224, 2635a-1). For those esoteric reasons the General Assembly did not content itself with putting teeth in the Control Law, but implemented it with veritable fangs. Those penalties effectively dissuaded appellant and its responsible officers from undertaking the brash venture of testing the validity of the Control Law by violating its terms and inviting and procuring criminal prosecution. *Prevention of such prosecutions was and is essential to safeguard appellant's rights in its property.* Decisions, in a long, unbroken line, hold that *equitable jurisdiction exists to restrain criminal prosecutions threatened under unconstitutional statutes when the prevention of such prosecutions is essential to safeguard rights of property.* *Truax v. Raich*, 239 U. S. 33, 60 L. Ed. 131; *Adams v. Tanner*, 244 U. S. 590, 61 L. Ed. 1336; *Kennington v. Palmer*, 255 U. S. 100, 65 L. Ed. 528; *Terrace v. Thompson*, 263 U. S. 197, 68 L. Ed. 255; *Packard v. Banton*, 264 U. S. 140, 68 L. Ed. 596; *Hy-Grade Provision Co. v. Sherman*, 266 U. S. 497, 69 L. Ed. 402. A comparatively recent case,

Tyson & Bro. v. Banton,
271 U. S. 418, 71 L. Ed. 718,

is typical. The appellant was engaged in New York City in the business of reselling theatre tickets which it obtained from theatre box offices, or from brokers, and which it resold at an advanced price. The New York statute prohibited the resale of any such ticket at a price in excess of fifty cents greater than the price printed on the face of the ticket. For a violation of

these provisions the New York statute provided a \$250.00 fine or imprisonment for one year, or both—which penalties, it will be observed, were not ten per cent so severe as those assumed to be provided by the Kentucky Control Law. Tyson & Bro. instituted suit to enjoin the respondent from enforcing the statute, and from threatening to institute criminal prosecutions against the appellant, its officers and agents. This Court said:

“Following the rule frequently announced by this Court, that ‘*equitable jurisdiction exists to restrain criminal prosecutions under unconstitutional enactments, when the prevention of such prosecutions is essential to the safeguarding of rights or property,*’ we sustain the jurisdiction of the district court.” (Italics ours.)

In the cited case, without an injunction Tyson could have continued its business and would have suffered but a diminution in profits; in the case at bar, Ziffrin—absent an injunction—would be out of business.

In a number of cases in which motor carriers have sought to prevent the enforcement against them of unconstitutional State statutes, and the penal and criminal provisions thereof, this Court uniformly has applied the rule of the cases above cited. The pertinent motor carrier cases are: *Michigan Public Utilities Comm. v. Duke*, 266 U. S. 570, 69 L. Ed. 445; *Buck v. Kuykendall*, 267 U. S. 307, 69 L. Ed. 623; *Bush & Sons Co. v. Maloy*, 267 U. S. 317, 69 L. Ed. 627, and *Allen v. Galveston Truck Line Corp.*, 289 U. S. 708, 77 L. Ed. 1463.

In enjoining prosecutions threatened under the unconstitutional statutory enactments presented in the cases cited, the Court awarded injunctive relief, although remedies existed at law, because the remedies at law were inadequate. The Court's action in enjoining enforcement of those statutes and its action in enjoining criminal prosecutions thereunder, show that the granting of such injunctions in no way violates the provisions of *Section 265* of the *Judicial Code*.

It is essential in the case at bar in order to safeguard appellant's property rights in its business and in its contracts, and in order to protect appellant, its officers and employees, from a multiplicity of baseless criminal prosecutions, that the threatened criminal prosecutions be enjoined. Against the injuries so threatened neither the State statutory appellate procedure—which appellees would foist upon appellant—nor any other remedy at law, would prove effective. Only the injunctive process affords this appellant an effective remedy and an adequate safeguard for its constitutional right to continue to engage in its established *interstate export business*, and so to do in its character of *interstate contract carrier*.

(c) The Twenty-first Amendment and the Webb-Kenyon Act Are Irrelevant.

The concluding paragraph of the pending motion asserts that the States have been invested with exclusive control of alcoholic liquors by virtue of the provisions of the *Twenty-first Amendment* to the Constitu-

tion and by the *Webb-Kenyon Act*. It suffices to say that the Amendment and statute referred to pertain to *importations* of liquors into a State in contravention of its laws, but that neither amendment nor statute undertakes to give a State any power, authority or control whatsoever with respect to the transportation of alcoholic liquors in *export—from and out of such State in interstate commerce*. The most casual reading of the Webb-Kenyon Act and the Twenty-first Amendment shows that their terms are as foreign to the question of *interstate exportation* of intoxicants presented upon this appeal, as are the terms and provisions of the Uniform Negotiable Instruments Act.

(d) Intrastate Commerce Is Not Involved.

The concluding paragraph of the pending motion asserts that it is appellees' contention that the commerce presented in the case at bar is *intrastate* commerce. If ever transactions of interstate commerce have been described in a pleading or record, *interstate* commerce unequivocally has been described, characterized and alleged in the complaint as amended and in the Jurisdictional Statement herein. We are as disinclined to allow our allegations of interstate commerce to be converted into allegations of intrastate commerce as Ziffrin, Inc., is loth—despite the duress and attempted compulsion of the Control Law—to suffer its contract carrier's business to be converted into a common carrier's business.

(e) Comity Is Not Involved.

The concluding thought of the last paragraph of the pending motion is that the matters drawn in question upon this appeal properly should have been litigated before the State courts of Kentucky upon statutory appeals from the aforementioned decisions denying appellant's applications for common carrier's certificate and Transporter's License. The record shows: the amount in controversy to exceed \$3,000.00, exclusive of interests and costs; the appellant to be a resident of Indiana and the appellees to be citizens and residents of Kentucky; and that the suit is one arising under the Constitution and laws of the United States. Both by reason of diversity of citizenship and presence of a Federal question appellant was entitled to select the United States District Court as the forum in which it would litigate with the appellees the question of the validity of the Control Law with respect to appellant's operations of transporting intoxicating liquors *exclusively in export from Kentucky and exclusively in interstate commerce*. Appellees would avoid, if they could, this Court's arbitrament of the issue, and motivated by that desire have injected a spurious issue of comity. The record presents no question of comity. The only suit between these parties is the case at bar; there is not, and there never has been, a suit between these parties in a State Court. There is not, and there cannot be, a question of conflicting jurisdiction between State and Federal courts. It is elementary, that as between courts of concurrent jurisdiction, the plaintiff is entitled to select his forum. Appellant, in the

exercise of that legally conferred option, selected the United States District Court for the Eastern District of Kentucky.

Upon the record presented, and well within the bounds of the principles enunciated so forcibly in *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 53 L. Ed. 382, this Court has disclaimed discretion to say that appellant quixotically should have prosecuted futile appeals through the state Courts and no question of comity is involved because, "The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied," and "When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction * * *."

CONCLUSION.

For the reasons and upon the grounds presented in the Jurisdictional Statement and in this brief, it would appear that this Court well may entertain jurisdiction of this appeal, that appellees' motion should be overruled, and that probable jurisdiction should be noted.

Respectfully submitted,

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APPENDIX.

KENTUCKY STATUTES.

1. Alcoholic Beverage Control Law.

Sec. 18, Ky. Stats., Sec. 2554b-114, sub-para. 7.

“(7) License to transport distilled spirits and wine to or from any point in Kentucky, the fee for which shall be \$10 per annum.”

Sec. 49, Ky. Stats., Sec. 2554b-147.

“Judicial review of order of board; parties and procedure; costs.—Any order of the Alcoholic Beverage Board refusing a license or revoking or suspending a license may be appealed from by the applicant or licensee, as the case may be, and any order of said Board granting a license or refusing to revoke or suspend a license may be appealed from by any citizen feeling himself aggrieved. The party aggrieved may, within ten days after the entry of the order with which he is dissatisfied, file in the office of the Clerk of the Franklin Circuit Court an attested copy of the order, of all the evidence heard, and of all the steps taken by the said Board relative to the order being contested, provided he shall first post a bond to secure the costs of that action in such sum as may be approved by the Circuit Court, with a corporate surety approved by the Division of Insurance of the Department of Business Regulation as to solvency and responsibility and authorized to transact business in this Commonwealth. The State Board and the licensee or applicant shall be necessary parties to all such appeals. The Circuit Court Clerk shall thereupon docket the case as though it were a petition in equity, and shall immediately issue a summons for said State Board, if the appeal be taken by an applicant or licensee, or a summons for said State Board and the licensee if the appeal be prosecuted.

by a citizen. Such summons shall be returnable in the same manner as are summonses in equity cases. If the appeal be from an order refusing to grant a license or revoking or suspending a license, it shall be the duty of the State Board, when served with such summons, or of such person as it may designate, to appear and defend the action of the State Alcoholic Beverage Board in refusing to grant or in revoking the license in question. If the appeal be from an order granting a license or refusing to revoke or suspend a license the burden of appearing and defending the action of said Board shall be upon the licensee.

"No formal pleading shall be required in such appeals, but the case shall be set down by the court for as early a day as possible for a hearing, and such appeals shall in all respects to be expedited as are declaratory judgment suits; after such hearing the court shall enter a judgment sustaining or setting aside the order of the State Alcoholic Beverage Control Board appealed from. No new or additional evidence may be introduced in the Circuit Court except as to the fraud or misconduct of some party engaged in the administration of this Act and affecting the order appealed from, but the Circuit Court shall otherwise hear the case upon the record as attested by the Board, and shall in all respects dispose of the appeal in a summary manner, its review being limited to determining whether or not:

"(1) The Board acted without or in excess of its powers.

"(2) The order appealed from was procured by fraud.

"(3) If questions of fact are in issue, whether or not any substantial evidence supports the order appealed from.

"Any party aggrieved by a judgment of the Circuit Court may appeal to the Court of Appeals in the same manner that appeals are taken under the declaratory judgment act.

"If the appeal be from an order refusing to grant a license, or revoking or suspending a license, the costs shall be taxed against the applicant or licensee in any event. If

the appeal be from an order granting a license or refusing to revoke or suspend a license, the costs shall be taxed against the citizen who, feeling himself aggrieved, has contested the order, in the event that the order of the Board granting the license or refusing to revoke or suspend the license, is sustained. In the event that such order is set aside with direction to the Board to refuse the license or to revoke or suspend the license, the costs shall be taxed against the licensee.

"No order granting a license shall become effective, and no license thereunder shall be issued, until the expiration of ten days after the date of the entry of such order; and if, within said period of ten days, an appeal from said order shall have been filed as provided by this section, then such order shall not become effective until said appeal shall have been finally determined.

"If a license shall be revoked or suspended by an order of the Board, the licensee shall at once suspend all business or other operations authorized under his license, except as provided in section 46 of this Act, though he may file an appeal in the Circuit Court from the order of revocation or suspension, and no court shall have authority to issue an injunction to suspend the operation of an order of revocation or suspension pending an appeal. If upon appeal to the Circuit Court an order of suspension or revocation is upheld, or if an order refusing to suspend or revoke a license is reversed, and an appeal is taken to the Court of Appeals, no court shall have authority to issue an injunction to suspend the operation of the judgment of the Circuit Court pending the appeal."

Sec. 52, Ky. Stats., Sec. 2554b-150.

"No traffic in alcoholic beverages save under license.— It shall be a criminal offense for any person to manufacture, store, sell, purchase, transport or otherwise in any manner traffic in alcoholic beverages as that term is defined in this Act, without first having paid to the Department of Revenue at its office in Frankfort, the license tax required by this

Act, and without first having obtained the license required by this Act.

"In addition to the criminal penalty prescribed for violation of this section, it is explicitly provided that, as often as any person shall manufacture, store, sell, purchase, transport, or otherwise traffic in alcoholic beverages without first having paid to the Department of Revenue at its office in Frankfort the license tax required by this Act, said persons will be required to pay said license for the full year notwithstanding that no license shall be issued, together with a penalty equal to twenty (20) per cent of said license tax."

Sec. 53, Ky. Stats., Sec. 2554b-151.

"Declaring certain property contraband: Providing for its disposition.—The following property is hereby declared to be contraband: (1) Any illicit still designed for the unlawful manufacture of intoxicating liquors, or any apparatus designed for the unlawful manufacture of spirituous, vinous, malt of intoxicating liquors. An illicit still or apparatus designed for the unlawful manufacture of intoxicating liquors shall include (a) An outfit or parts of an outfit commonly used, or intended to be used, in the distillation or manufacture of spirituous, vinous or malt liquors which is not duly registered in the office of a collector of Internal Revenue for the United States, and the burden of proving that same is so registered shall be on the defendant or defendants under charge; (b) any and all material, equipment, implements, devices, firearms, and other property used or intended for use, directly and immediately, in connection with the illicit traffic in alcoholic beverages. (2) Any spirituous, vinous or malt liquors in the possession of any one not entitled to possession of the same under the provisions of this Act. (3) Any spirituous, vinous or malt liquors in the possession of any one and to which the revenue stamps have not been affixed as and when required by the provisions of the Alcoholic Beverage Tax Act, Sections 4281c-1 to and including 4281c-25, Car-

roll's Kentucky Statutes, one thousand nine hundred thirty-six (1936) edition. (4) Any distilled spirits, wine or malt beverage in a container of a size prohibited by law or prohibited the particular party in whose possession same is found. (5) Any distilled spirits or wine kept in an unauthorized place within any licensed premises under the provisions of section 77 of this Act. (6) Any motor vehicle, water or air craft, or other vehicle in which, any person is illegally possessing or transporting alcoholic beverages.

"Any peace officers, including the Administrators, and the field representatives of the Department of Revenue are hereby authorized to seize, without warrant, any of the property declared to be contraband under this section and to hold the same subject to the order of the court before which the owner or one in possession of such property has been arraigned. Upon conviction of the defendant the court shall enter an order vesting title in all the contraband property in the Alcoholic Beverage Control Board, subject to the right of any owner or lienor of property in subsection six above, whose lien is of record, to intervene and establish his rights in such property by providing that the property was being used in connection with traffic in alcoholic beverages without the knowledge, consent or approval of such owner or lienor. If the owner of the property does so prove, the court shall order the property restored to such owner. If the lienor so proves the court shall order a sale of the property at public auction. The expenses of keeping and selling the same, and of all valid recorded liens which are established by intervention as being bona fide shall be paid out of the proceeds of the sale. The balance shall be paid into the State Treasury and be credited to the General Expenditure Fund. The Court shall order all sales under this Act in which lienors have an interest to be made by the sheriff who shall receive and be allowed the same fees as allowed for sales under execution. If the defendant be acquitted no property seized as

contraband in connection with the arrest of defendant shall be ordered returned or restored unless the person from whose possession same was taken proves that he was in lawful possession of said property. If the owners of any contraband seized under this Act cannot be located within ninety days, and during that time shall fail to appear and claim such contraband, or if such owner appears and agrees, title to such contraband shall immediately vest in the State Alcoholic Control Board.

Sec. 54, Ky. Stats., Sec. 2554b-154, sub-para. 7.

"(7) A Transporter's License as provided for in Section 18(7) of this Act shall be issued only to persons who are authorized by proper certificate from the Division of Motor Transportation in the Department of Business Regulation to engage in the business of a common carrier."

Sec. 89, Ky. Stats., Sec. 2554b-190.

"Transportation by non-licensee prohibited; exception.—No person except a railroad company or railway express company shall transport or cause to be transported any distilled spirits or wine, otherwise than as provided in this Act, except such Beverages may be transported by the holder of any license authorized by section 18 of this Act, from and to express or freight depots to and from the premises covered by the license of the person so transporting distilled spirits or wine."

Sec. 94, Ky. Stats., Sec. 2554b-195.

"Penalties for trafficking in alcoholic beverages without a license.—Any person who, by himself or acting through another, directly or indirectly, shall violate the provisions of section 52 of this Act, shall be deemed guilty of a crime and, upon conviction, shall be punished by a fine of not less than \$100.00 and not to exceed \$5,000.00 or by imprisonment not to exceed five years, or by both such fine and imprisonment. For a second and each subsequent offense the offender, upon conviction, may be fined in a sum not less than

\$500.00 and not to exceed \$10,000.00, or imprisoned for a term not to exceed ten years, or both so fined and imprisoned; provided, that in case the offender be a corporation, joint stock company, association or fiduciary, then the principal officer and/or the officer or officers responsible for such violation may be punished by such imprisonment."

2. Motor Vehicle Transportation Act.

Ky. Stats., *Sec. 2739j-86.*

"Appeal from decision of commission, petition, summons to issue.—When any application for a certificate or permit has been refused, the applicant shall have the right to appeal, or if the application is granted, any person who has filed a protest to the granting of such application shall have the right to appeal as hereinafter provided. The appellant may, within twenty (20) days after the rendition of the order of the Commission, file a petition of appeal with the Clerk of the Circuit Court of Franklin County. Such petition shall state completely the grounds upon which the review is sought, shall assign all errors relied on, and shall be accompanied by a copy of the record, certified by said Commission, or an abstract thereof if agreed to by all parties to the hearing before said Commission. The appellant shall furnish copies of the petition to each person who was a party to the hearing before said Commission. Summons shall be issued upon the petition, directing the adverse party or parties to file answer within fifteen (15) days after service thereof."

Sec. 2739j-87.

"Review by circuit court.—No new or additional evidence may be introduced in the Circuit Court except as to fraud or misconduct of some person engaged in the administration of this Act and affecting the order, ruling or award, but the court shall otherwise hear the case upon the certified record or abstract thereof, and shall dispose

of the case in summary manner, its review being limited to determining whether or not: One. The Commission acted without or in excess of its power; Two. The order, decision or award was procured by fraud; Three. The order, decision or award is in conformity to the provisions of this Act; Four. The finding of facts in issue is supported by any substantial evidence."

Sec. 2739j-88.

"Review proceedings, parties, judgment, remanding case; appeal to court of appeals.—The Commission and each party shall have the right to appeal in such review proceedings. The Court shall enter judgment, confirming, modifying or setting aside the order, decision or award, or, in its discretion, remanding the case to the Commission for proceedings in conformity with the direction of the court. The court may, in advance of judgment and upon a sufficient showing of facts, remand the cause to said Commission. Any party may appeal from the decision of the Circuit Court to the Court of Appeals. Such appeals to the Court of Appeals shall have precedence of other cases pending."

ACTS OF CONGRESS.

3. Judicial Code, Sec. 265, U. S. C. A., Title 28, Sec. 379.

"Same; stay in State courts.—The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy (R. S., Sec. 720; Mar. 3, 1911, c. 231, Sec. 265, 36 Stat. 1162).

4. Webb-Kenyon Act,

Being Act of Cong., March 1, 1913, c. 90, 37 Stat. 699; Act of Cong., August 27, 1935, c. 740, Sec. 202(b), 49 Stat. 877, U. S. C. A., Title 27, Sec. 122.

“Shipments into states having dry laws; prohibition.—The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place non-contiguous to but subject to the jurisdiction thereof, is hereby prohibited.”